

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

July 27, 2006

In the Matter of

Docket No. 2002-183

File No. W02-0399

Timothy P. Reynolds

Swansea

Final Decision

I adopt the recommended final decision of the Administrative Magistrate, with modification which does not change the disposition. As noted, the Department does not resolve property disputes, and any applicant must have a colorable claim of authority to pursue construction. Tindley v. Department of Environmental Quality Engineering, 10 Mass. App. 623 (1980). Here, the applicant's plans do not appear to show property ownership to mean high water, nor the assertion of any ownership through the depiction of the boundaries of private tidelands. A structure proposed on property of another, including private tidelands, must have the consent of the owner prior to licensing. Because at least some portion of the proposed dock would be placed on the private tidelands of the petitioner, a problem that emerged clearly only at the hearing, the license must be denied.

To avoid this issue in the future, all Chapter 91 applicants are advised to show property lines on their plans as part of a complete application, including the lines extending from mean high to mean low water consistent with the deed. See Chapter 91 Waterways License Application, License Plan Checklist, Boundaries (Appendix A in

6/06 version). The information on the plans should be consistent with the application form, which must be signed by the applicant and the landowner if other than the applicant, or the applicant must provide other evidence of legal authority to submit an application for the project site. 310 CMR 9.11(3)(a). These submittals are a prerequisite to the assignment of a file number by the Department under 310 CMR 9.11(3)(b). While requiring applicants to depict property lines and support assertions of ownership will not resolve the various property disputes that plague the Commonwealth's waterfront, it will enable the Department to make more informed determinations at a preliminary stage in the licensing process of the viability of a proposed project. Where an applicant does not have at least a colorable claim of authority to pursue a project requiring a Chapter 91 license on private property, it should be denied as allowed under 310 CMR 4.00 when an applicant fails to provide the information required for a complete application. See 310 CMR 4.10(8)(a).

Secondly, I do not agree with the Recommended Decision that new plans cannot be submitted to resolve disputes involving Chapter 91 licenses during the course of an administrative hearing. If no substitutions were allowed, licensing cases could not settle for anything less than an agreement to file a new application. When a Chapter 91 project is proposed and subject to public comment, abutters and other interested parties are on notice that the Department will make a determination on the application. The project may be modified by the applicant or conditioned by the Department in response to public comment, fulfilling a purpose of a public comment period, or conditioned or modified during an appeal, fulfilling a purpose of appeal rights. Only where a project is modified in ways that could not be reasonably anticipated from the plans submitted with an

application would due process require the Department to insist that a project proponent submit a new application and the Department to undertake a new review.

The parties to this proceeding are notified of their right to file a motion for reconsideration of this Decision, pursuant to 310 CMR 1.01 (14)(d). The motion must be filed with the Docket Clerk and served on all parties within seven business days of the postmark date of this Decision. A person who has the right to seek judicial review may appeal this Decision to the Superior Court pursuant to M.G.L. c. 30A, §14(1). The complaint must be filed in the Court within thirty days of receipt of this Decision.

**This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.**

Robert W. Golledge, Jr.
Commissioner